

Office Action Summary

Application No.

10/583,048

Applicant(s)

GAMBIN ET AL.

Examiner

SHUANGYI ABU ALI

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/26/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 5-7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date 20100529.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

Claims 1-10 remain for examination wherein claims 1-10 are amended.

Response to Amendment

Applicants' amendments to claims 1-10 to overcome the 35 U. S. C. 112 first and second paragraph, filed on 03/26/2010 are acknowledged. As such, the rejections to the claims 1- 10 set forth in the previous Office Action are withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

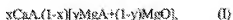
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4 and 8-10 rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent No. 4,051,056 to Hartman et al.

Regarding claims 1-4 and 8-9, Hartman et al. disclose a composition comprises of calcium carbonate and 2-65% of expended perlite, which has a size of 1-190 micron.(abstract , col. 8, lines 9-12, col. 15, line 66, col. 9, lines 6-15)) .Hartman et al. disclose that the abrasive such as calcium carbonate has a size of 1-250 micron (col. 15, lines 61-63).

Since the reference is silent about the impurity of the calcium carbonate, it is reasonable to expect that the calcium carbonate is pure.

Please note for the following formula



in which

A is a =OH or =CO_2 group, and

x and y are molar fractions where $0 < x \leq 1$ and $0 \leq y \leq 1$.

When X=1, the compound is calcium hydroxide or calcium carbonate

The reference differs from Applicant's recitations of claims by not disclosing identical ranges (the amount of the perlite less than 5% and particle size of larger than 90 micron). However, the reference discloses "overlapping" ranges (the clay amount is in the range of 2-65% and the particle size of 1-190 micron), and overlapping ranges have been held to establish prima facie obviousness (MPEP 2144.05).

Regarding claim 10, Hartman et al. disclose that the abrasive such as calcium carbonate has a size of 1-250 micron (col. 15, lines 61-63).

Regarding claim 4, Hartman et al. disclose a composition comprises of silica sand with a size of 1-250 micron and an amount of 0-15% and calcium carbonate with a size of 1-250 micron.

Response to Arguments

Applicant's arguments filed 11/10/2009 have been fully considered but they are not persuasive

The applicant argues that the prior art disclose a liquid composition referring from the claims. The Examiner respectfully submits in the abstract the prior art disclose the composition can be granular.

Allowable Subject Matter

Claims 5-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5-7 disclose a composition comprising calcic component with a size of less than 250 micron and a solid fluid agent such as attapulgite, raw and expanded vermiculite with a size of greater than 90 micron with a defined amount. The closest art is Hartman et al., which disclose a composition comprises of calcium carbonate and 2-65% of expended perlite, which has a size of 1-190 micron. Hartman et al. disclose

that the abrasive such as calcium carbonate has a size of 1-250 micron. But they are silent about the use of attapulgit and raw and expanded vermiculite with a size of greater than 90 micron.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **SHUANGYI ABU ALI** whose telephone number is (571)272-6453. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.A. LORENZO/
Supervisory Patent Examiner, Art Unit 1793

/Shuangyi Abu-Ali/
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